UNITED STATES DEPARTMENT OF COMMERCE

NATIONAL TECHNICAL INFORMATION SERVICE

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PUBLIC COMMENT ON CERTIFICATION PROGRAM FOR
ACCESS TO THE DEATH MASTER FILE

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MARCH 4, 2014

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ALEXANDRIA, VIRGINIA

PRESENT:

DON HAGEN, Moderator; Associate Director, Office
        of Product Management and Acquisition,
        National Technical Information Service
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T-A-B-L-E O-F C-O-N-T-E-N-T-S

1   P-R-O-C-E-E-D-I-N-G-S

2   MR. FITZGERALD: - submitting

3   written comments in response to the RFI.

4   There are five areas of primary interest and

5   concern to us. These include, one, ensuring

6   continuity of access to the DMF to certified

7   users during the process of developing and

8   adopting regulations.

9   Two, defining and regulating

10 certified users to include all those who meet

11 the requirements for such designation

12 including third party vendors servicing

13 legitimate users.

14   Three, ensure reasonable

15 operational criteria for certified users.

16   Four, ensure protection of the DMF

17 against identity theft and fraud.

18   Five, ensure the highest quality

19 of DMF data for certified users.

20   Again, our written submission will

21 be much more extensive, but one particular

22 item of the five I'd spoke with I'd to

1 embellish a little bit on are there are a

2 number of third party vendors that currently

3 access the DMF on behalf of several thousand

4 small life insurance, annuity companies,

5 pensions, life settlement companies, and non-

6 profit organizations.

7   These thousands of clients provide

8 names and Social Security Numbers to the third

9 party vendors who in turn run these numbers

10 against the DMF to provide the results to the

11 companies.

12   The data runs, range from as few

13 as 100 names to as many as 100,000 names. For

14 many organizations, pensions chair this is

15 cost effective to outsource their need for

16 death data for such relatively small data

17 runs.

18   In other words it would be cost

19 prohibitive for many of these companies to

20 obtain the DMF themselves, and undertake the

21 data runs themselves as it would require them

22 to have facilities, personnel, and software in

1 order to undertake the runs themselves.

2   As such, they outsource this to

3 third party vendors. Senator Casey emphasized

4 the need to - the valuable role of these

5 third party vendors on the floor during the

6 consideration of the budget act.

7   Now, on behalf of third party

8 vendors and the legitimate users, or their

9 customers, we look forward to working with the

10 department in forging the definitions and

11 accompanying regulations for third party

12 vendors, and legitimate users who utilize

13 these vendors. Thank you for providing this

14 opportunity. I'll provide these comments in

15 writing.

16   MR. HAGEN: Thank you Mr.

17 Fitzgerald. That was acg-consultants.com.

18 Brooke Hayes Stringer from the National

19 Association of Insurance Commissioners.

20   MS. STRINGER: Thank you. My

21 name's Brooke Stringer, and I am here to

22 represent the National Association of

1   Insurance Commissioners. The NAIC is the U.S.

2   standard setting and regulatory support

3   organization that is created and governed by

4   the 50 state insurance regulators as well as

5   from D.C. and the five U.S. territories.

6   In January the NAIC sent a letter

7   to the Commerce Secretary which we have

8   provided to all of you, happy to provide

9   another copy of that. In our letter we

10   highlighted some critical insurance regulatory

11   matters for consideration, and we also

12   encouraged the prompt development of a

13   certification system. So today I'd just like

14   to highlight some of the main points from that

15   letter.

16   While Congress's restriction on

17   access to the DMF are important privacy

18   protections to prevent fraud and identity

19   theft, the NAIC believes the law should be

20   implemented in a manner that balances those

21   privacy protections with insurance policy

22   holder protections that have been enacted in

1   state law or otherwise implicated in

2   settlements among certain states and certain

3   life insurers.

4   State insurance regulators believe

5   that life insurers have a legitimate business

6   purpose for DMF information. Life insurers

7   are able to use the DMF to identify deceased

8   policy holders which enables them to attempt

9   to notify beneficiaries of policy proceeds.

10   Several state laws and regulations

11   require life insurers to check their list of

12   in force life insurance policies and retained

13   assets accounts against the DMF and notify

14   beneficiaries of the existence of identified

15   policies, and the need to submit a claim.

16   Nine states have enacted laws

17   requiring life insurers to consult the DMF for

18   cross reference purposes at specified

19   intervals. In addition, several state

20   insurance regulators, coordinating through the

21   NAIC, are currently investigating the

22   country's top life and annuity insurers.

1   And many states have adopted

2   multi-state settlements with certain life

3   insurers which require insurers to access and

4   cross-reference the DMF on a monthly or a

5   quarterly basis. Consequently, life insurers

6   need prompt and uninterrupted access to the

7   DMF in order to be compliant.

8   The NAIC appreciates the

9   department's decision to maintain

10   uninterrupted access to the DMF until the

11   certification program is established. To the

12   extent that the department does not have a

13   certification process in place by March 26, we

14   would urge Commerce and the Administration to

15   continue allowing life insurers uninterrupted

16   access so as not to delay benefits to policy

17   holders.

18   And as you've mentioned today

19   potentially this and the Department are

20   looking at a short term temporary approach

21   that could be put in place until the final

22   process can be developed.

1   So, in conclusion, as the program

2   is developed we would strongly urge you to

3   ensure that the new program is not overly

4   burdensome to life insurers such that it would

5   effectively act as a bar to their access to

6   the DMF, thereby undermining an important

7   policy holder protection.

8   The insurance regulators look

9   forward to continued coordination with you all

10   to ensure a smooth transition period and a

11   prompt development of a certification process

12   to ensure that state insurance regulators can

13   continue to advance critical consumer

14   protection efforts. Thank you.

15   MR. HAGEN: Thank you, Ms.

16   Stringer. Carla McGlynn, Unclaimed Property

17   Consulting & Reporting, LLC. I'm sorry, could

18   we repeat that please?

19   MR. MAYER: My name's Dan Mayer.

20   I'm going to speak for Carla. I also signed

21   up.

22   MR. HAGEN: Okay, Dan, I have you.

1   Go ahead, yes.

2   MR. MAYER: Okay, so thank you for

3   having us. Dan Mayer, Unclaimed Property

4   Consulting & Reporting. We are an unclaimed

5   property consulting firm. However, we

6   provide, as Ms. Stringer and Mr. Fitzgerald

7   both presented, services to the insurance

8   industry in regards to meeting and finding

9   potential deaths in a policy book for the

10 companies.

11   So we are a third party firm, and

12 we specifically do it as a part of the

13 unclaimed property requirements for all 50

14 plus jurisdictions in the U.S.

15   As a part of that, as Ms. Stringer

16 indicated, there are many statutory,

17 regulatory, and audit conclusions that have

18 required over the past few years the use of

19 the Death Master File, current Death Master

20 File, to identify and allow insurers and

21 annuity companies to meet the requirements

22 submitted through the various state statutory

1 requirements as well as audits, either on a

2 monthly or quarterly basis performing matches.

3   And what our firm actually does

4 is, we utilize the current DMF in meeting

5 those requirements both in terms of exact and

6 fuzzy matches to the DMF based on the

7 requirements set forth in the statutes.

8   The second thing, and Mr.

9 Fitzgerald eloquently put this out there, that

10 the requirement for certification, we ask that

11 it be more definitively defined to allow for

12 whether a third party that we're providing the

13 information back to, the insurer or the

14 annuity company, can actually have access to

15 that information without re-meeting the

16 certification requirements, or they actually

17 meet the certification requirements without

18 going through the submission process.

19   And lastly, we would ask that, you

20 know, consideration be given for the costs

21 associated with this. As everyone is aware,

22 Ms. Stringer indicated too, that we would want

1   it to be a measure that allows for a

2   reasonable cost expectation including the

3   quarterly or whatever audits that may be

4   presented as a part of the NTIS's requirement

5   to substantiate the rules under the Internal

6   Revenue Code section. So, and thanks a lot.

7   MR. HAGEN: Thank you, Mr. Mayer.

8   Felix Federowicz, I'm sorry.

9   MR. FEDEROWICZ: Federowicz.

10   MR. HAGEN: Say it again? So I

11 don't really -

12   MR. FEDEROWICZ: Federowicz.

13   MR. HAGEN: Federowicz, thank you.

14 Thank you. He's with berwyngroup.com.

15   MR. FEDEROWICZ: Yes. Thank you,

16 and it's awful nice to -- we've been

17 subscribing to the Master Death File for over

18 20 years and I don't think I've ever met

19 anybody on the organization, so.

20   MR. HAGEN: Here we are.

21   MR. FEDEROWICZ: Here you are.

22 Okay, the Berwyn Group has been serving the

1   pension, life insurance, and financial

2   services industry for these past 20 years, and

3   we started out by using the Master Death File

4   to help pension funds identify deceased

5   individuals that were cashing checks.

6   Now of course they weren't cashing

7   the checks themselves, but someone was cashing

8   them fraudulently on their behalf. Okay?

9   Our company in the pension

10   industry represents hundreds of individual

11   companies with thousands of pension funds, and

12   millions, I mean millions, of subscribers.

13   And our work basically saves

14   countless millions, if not billions of

15   dollars, stopping fraudulent payments that --

16   that money could be used for the current

17   rightful beneficiaries, or future

18   beneficiaries. So it's really important work

19   that we do.

20   Brooke represents the NAIC. We

21   also do work with the insurance companies

22   right now based on their new statutory

1   requirements over the last couple years that

2   require them to audit their files proactively

3   for deceased individuals. They call that

4   unclaimed property. People are dead that they

5   don't know are dead.

6   Like, Uncle Jimmy buys a policy

7   for little Tommy and never tells little Tommy.

8   He drops dead, and so now the insurance

9   company has an insurance policy, and, you

10 know, the -- as opposed to letting the clock

11 run out on that, there are now requirements

12 that they audit.

13   We basically audit probably with

14 our life insurance customers, of which we have

15 about 60, we're doing 20 to 30 million records

16 a month against the Master Death File

17 identifying deceased individuals that would

18 not otherwise be reported. So it's very, very

19 important work that we do on behalf of our

20 customers.

21   We meet the requirements in the

22 new code, you know, we -- our customers have

1 a legislative or fiduciary obligation to do

2 this work, and we support them in that work.

3 We basically only do this kind of work. We

4 don't do anything beyond that.

5   As far as the credentialing

6 process, if you have to go through a process

7 of credentialing, companies like the Berwyn

8 Group that have been at it for 25 years, have

9 a large financial impact to our customers.

10   So if you were to stick us at the

11 back of the pack, you know, you put the

12 biggest impact at the back. You've really got

13 to move the people up to the front of the pack

14 who have been doing this for a long, long

15 time, and have a big financial impact to the

16 industry.

17   In terms of the security, we've

18 been at this for a long time. Our customers

19 have asked us to be secure. We've been

20 audited by all of our large customers. We've

21 had security firms come in and audit us.

22   We've had life insurance companies

1 come in and audit us. We've had banks come in

2 and audit us. And so we decided about five to

3 seven years ago to voluntarily subject

4 ourselves to the AICPA guidelines for

5 insurance security, and we are SOC 2 approved.

6   So, I would recommend as a part of

7 your credentialing process that you request

8 that your firms, even in this new thing you

9 put up, the notational application, I'm sorry.

10   The notional application -- that

11 part of that is send us a copy of your

12 certification if you've been certified, that

13 you are safe. Show us that you're safe, okay?

14 We can do that, and your customers, your

15 subscribers who are serious about security

16 could be able to do that.

17   The third thing that I would

18 finally say is that more information is better

19 than less information. There was a time that

20 you actually gave us the -- say the state

21 where the person died, you know, or the last

22 known address.

1   Well that really helps our

2   customers and us focus in on, well, someone's

3   died. Now we got to go to death certificate

4   because we just can't just cut off benefits

5   because it could be an error in the social

6   security file. You know, it can happen. We

7   can't just cut off benefits.

8   We've got to go find and locate a

9   death certificate. Well having that state

10   gives you a place to go, okay? And of course

11   the Numident File, of course, doesn't really

12   give you everything that you need to know.

13   There's - we have a lot of our

14   customers are like state teachers' retirement

15   systems, and they'll say to us, well we don't

16   participate in Social Security.

17   So the Social Security doesn't

18   really release those deaths though because

19   they don't have any reason to release them

20   because they don't have to stop the benefit.

21   So, I think you really have to

22   really rethink your release process to make

1   more data available that's useful for these

2   purposes, and that would be the gist of what

3   I had to say. Thank you very much.

4   MR. HAGEN: Thank you, Mr.

5   Federowicz, thank you very much. Jason

6   Goldman. Jason Goldman is from the U.S.

7   Chamber of Commerce.

8   MR. GOLDMAN: Thanks very much.

9   My name is Jason Goldman. I am the Senior

10   Telecom and Policy Counsel for the U.S.

11   Chamber. As many of you know the Chamber is

12   the world's largest business federation

13   representing the interests of more than 3

14   million businesses and organizations, every

15   size, sector and region, and dedicated to

16   promoting and defending America's free

17   enterprise system.

18   The Chamber appreciates the

19   opportunity to comment here today about the

20   Death Master File Certification Program. The

21   Chamber urges NTIS to ensure that all current

22   legitimate users of the DMF have access to the

1   DMF, under the certification program required

2   by the Bi-Partisan Budget Act of 2013, and

3   that those users have uninterrupted access to

4   the DMF while the program is being developed

5   and implemented.

6   Consistent with the Act, the

7   Chamber strongly urges NTIS to craft a

8   certification program that embraces the many

9   important uses of the DMF. Additionally, the

10   Chamber supports the redistribution of the DMF

11   by certified entities to third parties to

12   accomplish legitimate business purposes.

13   There are many examples of these

14   legitimate business purposes and how those --

15   and how they're used for the DMF. Life

16   insurance companies, as some person said, are

17   required by state law to use the DMF to

18   identify deceased, insured individuals, pay

19   policy proceeds, and distribute unclaimed

20   funds. Developers of identity authentication,

21   verification, and screening tools, and other

22   re-distributers of the DMF assist businesses

1   in detecting and preventing fraud against

2   consumers.

3   Companies incorporate DMF data

4   into products and services used by other

5   corporations, the legal industry, law

6   enforcement, and government agencies' anti-

7   fraud efforts, investigations, research and

8   similar purposes.

9   And additionally pension funds,

10   banks, credit unions, credit card issuers and

11   other financial service entities use the DMF

12   to protect and benefit consumers.

13   Retirement plans also use the DMF

14   to make payments to the correct recipients and

15   the correct amounts, and for determining when

16   a plan's beneficiary becomes eligible for

17   payment. The DMF is also used to exclude

18   deceased individuals from receiving financial

19   offers, fund raising solicitations, and other

20   marketing activities.

21   The DMF, again, helps to identify

22   deceased individuals for exclusion from

1   payment of future benefits from programs such

2   Medicare, Medicaid, Welfare, and Unemployment.

3   The Chamber appreciates the opportunity to

4   speak here today, and plans to file more

5   extensive written comments on the AG. Thank

6   you very much.

7   MR. HAGEN: Thank you Mr. Goldman.

8   Tom Litjen from PCI, which is Property

9   Casualty Insurers Association of America.

10   MR. LITJEN: Good morning. My name

11   is Tom Litjen. I represent the Property

12   Casualty Insurers Association of America.

13   It's a trade association of over 1000 property

14   casualty writers in all states throughout the

15   country. I appear today to urge continued

16   access to the Death Master File on behalf of

17   the property casualty industry.

18   As property casualty insurers we

19   often find ourselves in the position of paying

20   disability payments, continuing medical

21   payments, payments of all sorts to

22   individuals, and we need the access to the

1   Death Master File to ascertain whether those

2   individuals have passed.

3   We, of course, in the insurance

4   industry amass a great deal of personal

5   information from our policy holders. We are

6   very emphatic about maintaining the privacy,

7   the confidentiality of that information, and

8   we will -- believe that the property casualty

9   industry needs continued access to the Death

10   Master File to prevent fraud.

11   It's estimated that fraud costs

12   the property casualty industry about $80

13   billion a year, and the Death Master File is

14   a -- access to the Death Master File is a key

15   component of reducing or eliminating that

16   fraud which ultimately, obviously, costs

17   consumers. Thank you very much. We will be

18   submitting extensive written comments for the

19   record. Thank you.

20   MR. HAGEN: Well thank you Mr.

21   Litjen. Eric Ellman, Public Policy and Legal

22   Affairs Consumer Data Industry Association.

1   Is Eric here? He is, sorry.

2   MR. ELLMAN: Good morning. I'm

3   Eric Ellman, Senior Vice President of Public

4   Policy and Legal Affairs with the Consumer

5   Data Industry Association, CDIA, in

6   Washington, D.C.

7   CDIA is a national trade

8   association which represents companies that

9   aggregate data to third party databases which

10   are then used by American businesses to manage

11   a variety of risks, such as the likelihood of

12   payment, fraud potential, ability to pay,

13   underwriting risk, applicant, and applicant on

14   OPAC lists, et cetera.

15   Our members do not sell data to

16   the general public. Our members are regulated

17   by the number of federal laws including Title

18   V of the Gramm-Leach-Bliley Act, the Federal

19   Fair Credit Reporting Act, the Driver's

20   Privacy Protection Act, or DPPA, and even

21   Section V of the FTC Act concerning unfair and

22   deceptive trade practices.

1   Our members that use the DMF for

2   business to business, or B2B transactions,

3   they are obligated to maintain data security

4   standards via a variety of laws including some

5   of those that I mentioned like GLBA, FCRA, and

6   the FTC Act.

7   These standards include insuring

8   that there is a contract between each customer

9   who wishes access to the data, and a careful

10   customer on-boarding process in order to

11   ensure the legitimacy of the company seeking

12   access.

13   Our members may re-distribute DMF

14   data to their customers, or they may use DMF

15   data to update their databases of data and not

16   actually load the DMF data for re-

17   distribution.

18   Our members are in aggregate

19   likely the largest channels of distribution

20   for DMF data provided to the American business

21   community in a safe, regulated and secure

22   manner.

1   Examples of our members' customers

2   include banks, some of the largest financial

3   institutions, credit unions, insurers,

4   retailers, as well as state and local

5   governments. The uses of the DMF data fall

6   squarely within the four corners of the

7   exceptions to the prohibitions on disclosing

8   during the three year period.

9   All forms of identity management

10   ultimately are tied to the potential of

11   identifying a fraudulent transaction and laws

12   such as the FCRA which require, "reasonable

13   procedures to ensure the maximum possible

14   accuracy" of the data.

15   We applaud the decision to allow

16   continued DMF data while the certification

17   process is established. The decision protects

18   consumers. We urge you to continue to keep

19   the DMF available even during the

20   certification process is established, and

21   until legitimate users such as our members are

22   certified.

1   Cutting them off data would harm

2   American business, and I think you've heard a

3   couple of previous commentators discuss this

4   interim period. We are concerned, what are

5   the intentions regarding access to the DMF

6   data even after the certification process is

7   working?

8   If the DMF is shut down when the

9   new certification goes online, will current

10 subscribers be cut off? It's unclear how long

11 this backlog will take to be cleared.

12   And there will be, we understand,

13 potentially market asymmetries when companies

14 get access first while others wait in line to

15 get final certification. Those are our

16 comments. We will be filing extensive written

17 comments follow up to this meeting. And I

18 thank you for your time and attention.

19   MR. HAGEN: Thank you Mr. Ellman.

20 Joseph Rubin, the Debt Buyers Association.

21   MR. RUBIN: My name's Joe Rubin.

22 I'm with the law firm Arnold, Goldman, and

1   Gregory. Thank you very much for having us

2   today. I'm here on behalf of the Debt Buyers

3   Association. So DBA members purchase debt,

4   distressed debt, from original creditors, or

5   from other debt buyers, and then use

6   collection methods to collect that debt.

7   DBA members are heavily regulated

8   by the Fair Debt Collection Practices Act.

9   They're also regulated by Gramm-Leach-Bliley.

10   They are a financial institutions.

11   They're regulated by the Telephone

12   Consumer Protection Act, by the CFPB, by the

13   FTC, by HIPAA in many cases, and they also

14   have a very stringent DBA self-certification

15   program which includes additional data

16   security and other consumer protection

17   requirements.

18   So the interest of DBA members in

19   the Death Master Files is very pro-consumer,

20   and there are a couple ways that they use it.

21   First, they scrub the list.

22   When they are about to purchase

1 debt, or they are about to sell debt, they

2 scrub the list to make sure that there are no

3 deceased individuals on those lists to make

4 that they're not selling or buying debt from

5 a deceased individual.

6 They also scrub lists to ensure

7 that they're not going to be contacting a

8 deceased individual. You know, obviously

9 nobody wants to receive a call in that

10 circumstance from a debt collector, or a debt

11 buyer.

12 So we want to make sure that we

13 are contacting those folks and that if

14 somebody has been deceased that we'll use

15 alternative collection efforts, or that we

16 will send the case to probate, or do whatever,

17 take whatever appropriate steps are necessary

18 to ensure that contact is appropriate and

19 doesn't annoy individuals.

20 One additional point that's been

21 raised a couple times, we also want to make

22 sure that the DMF is available during the

1 | certification process. Obviously, these

2 | efforts will continue, and we think that's an

3 | important thing, but thank you very much for

4 | your time.

5 | MR. HAGEN: Thank you Mr. Rubin.

6 | Grace Henke, is Grace here? No. Okay, I go

7 | to my second list. Amanda Sozer from FNA

8 | International.

9 | DR. SOZER: Good morning. My name

10 | is Dr. Amanda Sozer, and I'm the President of

11 | SNA International, a small business located in

12 | Alexandria, Virginia. SNA International

13 | specializes in forensics and human

14 | identification.

15 | We have been involved in many

16 | important human identification projects. For

17 | example, our founders were sent by the

18 | National Institute of Justice to New York City

19 | to help in the DNA identification of the

20 | victims of the World Trade Center, and SNA

21 | managed the DNA identification of the

22 | Hurricane Katrina victims.

1   More recently, we've been hired by

2   the U.S. Army to research and find those

3   eligible to contribute DNA family reference

4   samples to aid in the repatriation of remains

5   of our unaccounted for Army servicemen as

6   mandated by Congress.

7   SNA International has a team of

8   certified genealogists who conduct genealogy

9   research in an effort to identify the primary

10 next of kin and closest DNA eligible living

11 relatives of these soldiers.

12   SNA International's role in this

13 important program is to be the initial conduit

14 between the Army and the families. In essence

15 we are the researches hired to locate family

16 members that once identified and located, the

17 Army can reach out to them and ask them to

18 participate in this repatriation program.

19   SNA's genealogists are all board

20 certified by the Board of Certification of

21 Genealogist, or they are accredited by the

22 International Commission for the Accreditation

1 of Professional Genealogists. Most of them

2 are members of the Council for the Advancement

3 of Forensic Genealogy. These organizations

4 evaluate and are credentialed genealogists.

5   The Death Master File is

6 absolutely essential for a genealogist to do

7 the work they do, to locate the next of kin

8 and DNA donors for soldiers missing from past

9 wars.

10   For example, the siblings of our

11 World War II missing servicemen are critical

12 DNA donors who are in their late 80's and

13 90's. Many of these individuals have died

14 within the last three years. We must access

15 their death dates in order to locate an

16 obituary and find living children, the

17 soldier's nieces and nephews.

18   It is important that our

19 genealogists as well as other genealogists who

20 are working for other military branches have

21 the ability to directly access Death Master

22 File themselves.

1   These certified genealogists might

2   access the Death Master File one or two dozen

3   times for each case. They may return to the

4   Death Master File multiple times as they learn

5   location, a full name, or birth, or other

6   information that may be uncovered.

7   Limiting our genealogists' access

8   to the Death Master Registry would impede

9   important progress the Army is currently

10   making in identifying the servicemen missing

11   from past conflicts.

12   Additionally, as a small business,

13   I am concerned that the process could be

14   financially burdensome. Thank you for the

15   opportunity to speak today, and we will be

16   following up with complete written response to

17   your RFI questions. Thank you.

18   MR. HAGEN: Thank you Ms. Sozer.

19   Thank you very much. Courtney Yohe, I

20   believe? Courtney do I have the last name

21   correct? Yohe? Okay, I was not too far off.

22   Courtney's with the -- Ms. Yohe is from the

1   Society of Thoracic Surgeons. Thank you.

2   Thoracic. I was close on that, too, you know?

3   MS. YOHE: But I'll do it for you

4   again here.

5   MR. HAGEN: Thank you.

6   MS. YOHE: My name is Courtney

7   Yohe, and I'm the Assistant Director of

8   Government Relations for the Society of

9   Thoracic Surgeons. Thank you for the

10   opportunity to present these comments.

11   Founded in 1964, the Society of

12   Thoracic Surgeons is an international not for

13   profit organization representing more than

14   6700 members located in 85 countries who are

15   dedicated to ensuring the best possible

16   outcome for surgery of the heart, lungs,

17   esophagus as well as other surgical procedures

18   within the chest.

19   The STS National Database was

20   established in 1989 as an initiative for

21   healthcare quality improvement and patient

22   safety. The STS National Database has three

1   components, Adult Cardiac, General Thoracic,

2   and Congenital Heart Surgery.

3   STS is also partnered with the

4   American College of Cardiology to create the

5   STS/ACC TVT Registry, a data repository

6   developed to track patient safety and real

7   world outcomes related to the transcatheter

8   aortic valve replacement procedure.

9   Launched in 2011, the STS Research

10   Center is a nationally recognized leader in

11   patient outcomes research. With a wealth of

12   data in the STS National Database, the center

13   supports cutting edge clinical research that

14   is designed to improve surgical outcomes and

15   the quality of patient care.

16   Because the STS National Database

17   and TVT Registry do not collect long term

18   clinical data, linking these registries with

19   the Social Security Death Master File allows

20   for the verification of life status of

21   patients who would otherwise be lost for

22   followup after treatment.

1   Utilizing clinical data combined

2 with claims information and the Death Master

3 File, STS has been able to provide long term

4 information on patient treatment outcomes, and

5 estimate patient survival rates.

6   STS members use this information

7 to evaluate the respective outcomes against

8 national standards or benchmarks. Outcomes

9 data also helps physicians, patients, and

10 their families to make informed treatment

11 decisions.

12   The Society also uses this

13 information to facilitate research comparing

14 the long term effectiveness of alternative

15 treatment strategies based on patient

16 demographics.

17   As a medical society, STS has long

18 advocated for the protection of patients and

19 our member's privacy. The STS National

20 Database upholds rigorous privacy protocols,

21 and is fully compliant with the Health

22 Insurance Portability and Accountability Act

1　requirements, and Federal Common Rule

2　protections for human subjects research.

3　　　　　STS, through its contracts with

4　the Duke Clinical Research Institute,

5　maintains patient identifier information

6　separately from clinical or other demographic

7　data.

8　　　　　Externally derived data like those

9　from the Death Master File are used to

10　supplement the data in the individual record,

11　but these clinical patient level data never

12　leave the database except in de-identified

13　form.

14　　　　　The Society of Thoracic Surgeons

15　has a legitimate business purpose pursuant to

16　the Illinois General Not For Profit

17　Corporation Act of 1986, and Section 501(c)(6)

18　of the Internal Revenue Code.

19　　　　　The quality improvement activities

20　conducted by members of the Society illustrate

21　STS's business purpose to reflect our central

22　mission to enhance the ability of

1   cardiothoracic surgeons to provide the highest

2   quality patient care through education,

3   research, and advocacy.

4   Further, the Society is also

5   pursuing recognition of the adult cardiac

6   surgery database as a qualified clinical data

7   registry under newly implemented provisions of

8   the American Tax Payer Relief Act of 2012.

9   We look forward to working with

10   you to ensure that STS can use data from the

11   Death Master File with appropriate protections

12   in place to continue these vital research and

13   quality improvement activities. We'll be

14   providing written comments. Thank you for

15   your time and attention.

16   MR. HAGEN: Thank you, Ms. Yohe.

17   Robbie Meyer, American Council of Life

18   Insurers.

19   MS. MEYER: Good morning.

20   MR. HAGEN: Good morning.

21   MS. MEYER: My name is Robbie

22   Meyer, appearing before you today on behalf of

1   the American Council of Life Insurers. The

2   ACLI is a Washington, D.C. based trade

3   association with approximately 300 member

4   companies that do business across the United

5   States and abroad. We appreciate the

6   opportunity to appear before you today, and

7   thank you very much for this opportunity.

8   To underscore and embellish just a

9   little bit upon the comments that have been

10   made by a number of others earlier --

11   continued, uninterrupted access to the DMF by

12   life insurance companies, and third parties

13   that work for or on behalf of life insurers

14   for legitimate business purposes and

15   legitimate fraud prevention purposes is

16   absolutely critical for life insurer's ability

17   to comply with state unclaimed property

18   settlement agreements, state unclaimed

19   property laws, and to detect and prevent

20   against fraud.

21   Any interruption in life insurers'

22   access to the DMF could inadvertently hinder

 1   families from obtaining life insurance

 2   benefits for which they're eligible, and

 3   jeopardize life insurers ability to most

 4   effectively protect against fraud and

 5   erroneous payments in claims for life

 6   insurance policies, for annuities, for

 7   disability income policies, and a connection

 8   with long term care policies. It could also

 9   jeopardize their ability to protect against

10   fraud in the issuance of new insurance

11   policies.

12   To provide a few specifics as to

13   the unintended but very harmful consequences

14   that could result from any interruption in

15   life insurers' access to the DMF, since 2013,

16   13 insurance companies representing about 55%

17   of the premiums collected for all insurance

18   policies have entered into regulatory

19   settlements with state officials from 30

20   states.

21   Nationally, these settlement

22   agreements have resulted in over $173 million

1   being paid directly to beneficiaries by

2   insurance companies, and over $800 million

3   being paid or sheeted to state which continue

4   efforts to locate and pay insurance

5   beneficiaries.

6   The states of Florida, California,

7   Illinois, North Dakota, New Hampshire, and

8   Pennsylvania are serving as leading states in

9   examinations of the 40 largest insurance

10   groups which comprise more than 92 percent of

11   the insurance, life insurance, and annuity

12   market nationwide.

13   One goal of these examinations is

14   to require all 40 of these large insurance

15   groups to use and rely upon the Death Master

16   File. In addition, as has already been

17   stated, nine states have already enacted

18   statutes that require life insurers to use the

19   Death Master File. It's my understanding that

20   now 11 state legislatures are in the process

21   of considering similar legislation.

22   So any interruption or loss of

1   life insurers or third parties who work for

2   them for legitimate fraud prevention, or

3   business purpose, any interruption in their

4   access to the DMF would actually make it

5   impossible for life insurers to comply with

6   these settlement agreements, and to comply

7   with these state laws which are already on the

8   books and being considered. And also, as I

9   indicated, further could significantly

10 jeopardize their ability to protect against

11 fraud.

12   So we encourage you as you're

13 already doing, clearly, to make every effort

14 to ensure uninterrupted, continued access to

15 the DMF for life insurers, and, again, third

16 parties that work on their behalf for

17 legitimate business and fraud prevention

18 purposes.

19   We were going to suggest to you as

20 one possibility, something to consider, is an

21 interim certification process. Like, it

22 sounds like, you all are taking under

1   consideration. Of course, we'll have to take

2   a look at the details of what you propose, but

3   that was an idea that we were going to

4   suggest.

5   So we very much look forward to

6   working with you all and thank you for the

7   opportunity. We will be submitting written

8   comments.

9   MR. HAGEN: Thank you Ms. Meyer.

10   That concludes the list of individuals who

11   have signed up for the three minute segments.

12   Is there anyone I've missed in the audience

13   who would like to come forward?

14   And I think if not, we don't have

15   anyone signed up from the web that I can tell.

16   Okay, so we're good to go. With that I'd like

17   to take about a ten minute break, if you don't

18   mind.

19   They have, in the back of the room

20   the, let me underline this, notional draft

21   certification form in the back of the room.

22   I don't know if anybody, if that can be

1   communicated any more, that this is a draft.

2   This is for that purpose only, as a draft.

3   You are welcome to pick that up.

4   What we'll try to do is reconvene

5   and try to, again, this is not a discussion.

6   It's actually to hear more, but I want to

7   convene with the group here to see if there's

8   any particular questions that we'd like to

9   have addressed by the audience. So let's

10   reconvene here right at 11:00. Thank you.

11   (Whereupon, the foregoing matter

12   briefly went off the record and went back on

13   the record at 11:00 a.m.)

14   MR. HAGEN: If we could just come

15   back to order. If you don't mind, we have

16   people on the web that we need to keep alive

17   and keep engaged. For those of you on the

18   web, one of the things, one of the points that

19   I want to remind people, is that you have an

20   ability on the web to write in a comment in

21   the notes, and send to our webmaster, or

22   person, whoever's in the back of the room

1   behind the dark windows, who will then pass

2   that comment on to me.

3   But I want to remind people on

4   that side is what I've gotten so far, I've

5   gotten two interactions with people on the

6   web. So this is working. The WebEx is

7   working, but they're questions, not comments.

8   And so, what I'm looking for are really

9   comments that can kind of add to the process

10   going forward here.

11   With that said I think what we'd

12   like to do now is, since we have time, it's

13   only a little after 11:00, if there's any

14   compelling points that were not brought up

15   from the presenters this morning that we want

16   to, if someone wants to remind us, or tell us

17   again, or just bring something new to the

18   floor, now is the time to do that. So we're

19   now not into the three month limitation, but

20   don't get carried away. So please, again, use

21   the mic and identify yourself as you come to

22   the mic, if there are any.

1   MS. SOZER: This is Amanda Sozer

2   from SNA International. During the break I

3   was asked a question. Are there other

4   databases that our genealogists could use to

5   get the same information?

6   And I am not aware of any other databases that

7   they could use to get the same information.

8   It's really critical for them to do their

9   research, and, you know, they'll go in and

10   they will look things up, they'll get

11   information, they'll look it up again.

12   They're not looking for the Social Security

13   Number, but they're looking for the other

14   information that's in that database. So it's

15   really very critical for them to do this time

16   sensitive research.

17   MR. HAGEN: Can I ask a question

18   on top of that?

19   MS. SOZER: Okay.

20   MR. HAGEN: Is it a question of

21   content in other sources, or is it a question

22   of timeliness in other sources, or any other

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 1   factors?

 2             MS. SOZER:  Yes, and what I'd like

 3   to do if I can, if I can copy, Ms. Maris

 4   (phonetic) is one of our certified

 5   genealogists whose on the web, is it possible

 6   for her to answer that question?

 7             MR. HAGEN: She can write a comment

 8   in, and we'll read it from here.

 9             MS. SOZER:  Okay, perfect, yes.

10             MR. HAGEN::  It's not ideal, but

11   that's the best we can do for now.

12             MS. SOZER:  Yes, but I think it's

13   really about the content, and she can answer

14   that, you know, much better than I can, and

15   much more thoroughly than I can.

16             MR. HAGEN:  So the answer is, no.

17   We can, there is nothing else that matches the

18   DMF content.

19             MS. SOZER:  I believe that's

20   correct, yes.

21             MR. HAGEN:  For your usage.

22             MS. SOZER:  Yes.
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1   MR. HAGEN: Thank you.

2   MS. SOZER: Thank you.

3   MR. HAGEN: Yes, sir?

4   MR. FEDEROWICZ: I'm Felix

5   Federowicz from the Berwyn Group. We actually

6   acquire data from other sources. There are

7   certain state vital statistics departments

8   that will provide data. A lot of those

9   sources are also starting to dry up. And so

10   I think it's really important that, you know,

11   we keep something open for this process, that

12   we have right now, we have probably 110

13   million records, of which maybe 90 million are

14   the Social Security Administration. I think

15   you're releasing 86 million right now. Does

16   that make some sense? I think that's the

17   number it is?

18   MR. HAGEN: I think we have 93

19   million something. I think that was the last

20   number I think we've heard.

21   MR. FEDEROWICZ: I think you

22   dropped it because of the (inaudible).

1   MR. HAGEN: Ah, yes.

2   MR. FEDEROWICZ: Yes, it's

3   probably 80, yes, something like that. So, I

4   mean, for those people who are looking for the

5   sources, I mean, we can contact State Vital

6   Statistic Department --

7   (Inaudible due to recording

8   equipment malfunction.)

9   MR. HAGEN: -- stand here, the

10   extent to which the information that's in the

11   DMF is, would be available from other sources

12   and could be accessed by current users of the

13   DMF in the event that NTIS were unable, for

14   any reason, to continue providing the DMF data

15   to the public as we alluded to earlier. So if

16   anyone else has any insights on that either

17   now, or through the comment period, we would

18   very much appreciate hearing from you about

19   that.

20   MALE PARTICIPANT: I would say

21   that's very (inaudible) perception, some

22   places in the Federal Government, that if the

1 DMF were to be curtailed or cut off, even for

2 a period of time that there's other resources

3 equivalent to it, available to you. And as a

4 perception that we have just recently, I

5 guess, come across, and we're trying to, we

6 need to provide evidence from the user

7 community that, that is a mis-perception on

8 the part of those in the Federal Government

9 who adhere to that belief, or that thesis I

10 guess. So it's very important that -- if you

11 comment on that for us.

12   MR. FEDEROWICZ: I can make a

13 comment about that. As I mentioned, we

14 acquire data from other sources. Some state's

15 vital statistics department will provide it.

16 I believe we really have, I don't want to make

17 it public record because it, kind of, gives us

18 a little competitive advantage, but we have

19 probably 30 alternate sources. Some of those

20 of which are actively acquired from states who

21 still are willing to give the data. Many of

22 them have been closing down over time, where

1   they're saying we won't supply it anymore.

2   So, while we have, you know, other

3   sources, it's nowhere near adequate. It's

4   nowhere near adequate, you know, to do our

5   job. If all 50 states would say, okay, we're

6   going to let you guys have access to this

7   data, then we probably, it would be probably

8   a better source than the Social Security

9   Administration, because the Social Security

10   Administration releases only the Numident

11   File. And they don't release information, for

12   instance, if nobody's, like if a baby dies,

13   there's no benefits being applied for, that

14   data never gets released.

15   And so the insurance policies

16   related to those individuals don't get, so, I

17   think it's really important to keep this open.

18   It's a falsehood to think that there's

19   alternate sources of debt data that would be

20   able to do the job that we have done for our

21   customers.

22   MR. HAGEN: You have a second

1   comment?

2   MR. FREIMUTH: My name is Matt

3   Freimuth, and I represent UPCR which does this

4   Death Master matching to the life insurance

5   companies, and we are a small business. And

6   trying to ascertain all the different data

7   sources that would basically be comparable to

8   the SS DMF is actually quite time consuming,

9   and quite expensive. I mean, and, quite

10   frankly, we can't really grade a database that

11   would be comparable to that. The other point

12   I'd like to make is that as we're looking for

13   this, we rely on the SS DMF because the

14   government is producing this data.

15   And if we use other data sources we feel that,

16   you know, we're trying to do statutory

17   lookups. And can we rely on another source

18   that really isn't, you know, official record,

19   really? And that's one of our big concerns

20   when we produce this, you know, for the

21   matching process. Thank you.

22   MR. HAGEN: Wait a minute. Yes,

1   ma'am?

2   MS. YOHE: Courtney Yohe, the

3   Society of Thoracic Surgeons. While I won't

4   necessarily name what I think would be the

5   proposed alternative for us to access, I will

6   give you the three criteria that we've used in

7   evaluating other options, and those are cost,

8   you know, the other options that we've

9   explored have been exponentially more

10   expensive than what we were able to access

11   through the Death Master File.

12   Definition, our specific purpose

13   is quality improvement under various statutory

14   authorities, and that doesn't necessarily meet

15   the definition of what might be required to

16   access other data sources. And then the third

17   criterion would be timeliness. And, you know,

18   this is something that is extremely important

19   to our membership, because what we do with our

20   clinical registry is provide very real-time

21   feedback to our surgeons on their own

22   performance, and on the value of the

1   procedures that they're performing.

2   MR. HAGEN: Sir?

3   MR. MOSS: Fred Moss with the

4   Federation of Genealogical Societies. We have

5   seen this statement made in some of the,

6   several Congressional Hearings that we've

7   monitored over the last two years, that there

8   are alternate sources. And you have well

9   summarized many of the problems with that. I

10   will add to it this observation. This is a

11   highly mobile society, and I believe that I am

12   correct in saying that there are 58 reporting

13   entities that provide vital statistics

14   reporting. The 50 states, and then a number

15   of large metropolitan areas have their own

16   separate databases and ways of accessing.

17   Our problem is, there is no

18   national overview for death information that

19   I am aware of. I understand there may be some

20   medical research databases with the

21   limitations that were previously described,

22   with one of them being it is a -- it requires

1   you to submit a query. And then someone with

2   direct access to the database may actually

3   have to conduct the search for you, which is

4   cumbersome and expensive. And, plus, in which

5   of those 58 jurisdictions do I go to look for

6   it?

7   Even were the states uniform in

8   providing accessibility, it would still be a

9   problem, but the really bad news is the

10 tendency there is following this same

11 approach, that in the interest of preventing

12 identity theft, and under the banner of

13 protecting our privacy, we are making access

14 even more restrictive than it has been

15 historically.

16   Prior to 1992, most states

17 provided public access to vital statistics

18 data. In '92, in the '92 edition of the Model

19 State Vital Statistics Act, was the first time

20 where we started imposing embargo periods, and

21 the number then used was 100 years for birth

22 certificates, and 50 years for death,

1   marriage, divorce records. The, again, in the

2   light of current concerns about privacy, the

3   pending revision to the Model State Vital

4   Statistics Act, the 2011 version would

5   basically add 25 years to those embargo

6   periods for general access.

7   There are ways of limiting the

8   damage being done, but basically we've

9   inserted another generation between living

10   knowledge and historical records. And that

11   basically thwarts any meaningful research.

12   When we have time, and I will relinquish at

13   the moment, but I would, when given an

14   opportunity, I do want to explain some of the

15   categories that we've identified most

16   genealogists could endure a three year

17   blackout of the Social Security Number. The

18   broader data is, it would even then be a

19   problem. Most could handle that. There are

20   six or seven categories of folks that we've

21   struggled to identify that we hope will help

22   you identify those for whom a three year delay

1   will be problematic. And I'll be happy to

2   share those as time allows.

3   MR. HAGEN: Thank you. While

4   she's coming to the mic, we have one anonymous

5   comment from the web. Actually I have two.

6   One's anonymous and one is not. The anonymous

7   one says, health and medical researchers can

8   access vitals data through the National Death

9   Index at CDC. That's the comment. The second

10 comment that comes from Lillian Ingster with

11 her organization not identified, says, as a

12 reminder, all vital statistics data, including

13 death data, are collected and, all caps, owned

14 by the states, and subject to each of their

15 state rules and regulations. These states do

16 not relinquish their control of the data when

17 they provide it to the federal government.

18 End of comment.

19   A couple questions, just excuse me

20 if you don't mind. One says, will the

21 PowerPoint presentation be made available to

22 the public? The answer is, yes, it will be

1   made available to the public on the web, and

2   the WebEx presentations will be made available

3   as well. That was the second question. So,

4   but back to the floor.

5   MS. SOZER: This is Amanda Sozer

6   again, and I wanted, I got the answer to the

7   question that I asked Cathy. She wasn't able

8   to send a comment in. A few states -- so the

9   bottom line is there's no other place that our

10   forensic genealogists can get this information

11   from. There are a few states that have open

12   records, open death records, but again, as Mr.

13   Moss pointed out, when you're doing this

14   research, knowing additional information, such

15   as where did someone apply for their social

16   security number, or where did they die, gives

17   our researchers information on where to look.

18   So, for example, if someone died

19   in Florida, but they applied for their Social

20   Security Number in Michigan, and the soldier

21   grew up in Michigan, there's a likelihood that

22   there's a link there. So it's all of that

1   information, and then that's assimilated by

2   the genealogist to try to locate these

3   individuals. So I, hopefully I've answered

4   your question. Thank you.

5   MR. HAGEN: Thank you. I have a

6   question for the genealogist types, if you

7   don't mind. I have a question on use, versus

8   disclosing. Is it possible for the

9   organizations to use content, versus disclose

10 content? In other words, matching services

11 which we've hear referenced several times in

12 this discussion this morning, in many ways

13 just use it for matching, and as coming from

14 an external number, or an external identifier,

15 matches against this and doesn't really touch

16 or use the content, but it matches against it.

17 Can you comment on this use versus disclose

18 question?

19   MR. MOSS: I can, and it's in the

20 context of our forensic genealogist

21 interacting with courts. And we frequently

22 have that in test state proceedings. We have

1   it in land title cases. We have it probate of

2   estates. We have it in resolving oil and gas,

3   mineral interest titles. We have it in right

4   of way, purchase of right of way if we want to

5   expand a highway.

6   And every court I've ever appeared

7   in wants to see the official record

8   demonstrating that what you are asserting as

9   a genealogist is documented in vital records,

10   and so in that context certainly.

11   In the scholarly context you want other

12   researchers to be able to follow the path that

13   you followed, and reach their own conclusions

14   about how good a job you did in arriving at

15   the genealogical conclusion you are putting

16   forth. And so it's mere use, mere access, not

17   being able to document what you have concluded

18   undermines the entire process.

19   MR. HAGEN: Thank you.

20   MS. SOZER: Yes, I concur with Mr.

21   Moss that our genealogists, we supply a report

22   to the Army so that they can follow the

1   research that was done. So we might say we

2   found that this person was, died in this

3   state. And then we would look for the

4   obituary in that state to look for such people

5   listed in that obituary. So our sources list

6   is something that someone else can follow and

7   independently verify that the research was

8   done appropriately.

9   MR. HAGEN: Okay, thank you. Sir.

10   MR. FREIMUTH: I also want to make

11   sure I understood your use versus disclosure.

12   MR. HAGEN: Yes. Thank you.

13   MR. FREIMUTH: Because when a

14   match is done, we actually would disclose that

15   information from the SS DMF to the insurance

16   to the insurance company.

17   MR. HAGEN: I'm sorry, you were

18   disclosing that you've made a match?

19   MR. FREIMUTH Yes, well a

20   potential match. And we would -

21   MR. HAGEN: But did you have a SSN

22   number originally?

1   MR. FREIMUTH: Maybe, maybe not.

2 And so that's the requirement -

3   MR. HAGEN: So that's a

4 disclosure.

5   MR. FREIMUTH: That's a

6 disclosure. That's correct. And one of the

7 questions we would have is, if we disclose

8 that information with the insurance company

9 that we would be providing this information

10 to, need to be certified in order to accept

11 that, and receive that information? And that

12 was posed directly from one of our clients.

13   MR. HAGEN: Thank you.

14   MR. FREIMUTH: Thank you.

15   MR. HAGEN: I have a comment from

16 Jan Alpert, source, I am Chair of the Records

17 Preservation and Access Committee. She wants

18 to make three points. We would not have been

19 closing access to DMF if IRS had been using

20 the DMF and other filters to prevent the

21 fraud. That make sense? Bravo? Okay, I

22 communicated that one okay then. The IRS

1   began using filters in 2012, and the fraud

2   from the use of the Social Security Number of

3   the deceased is decreasing further from the 2

4   percent reported in 2011. Clear? Bravo

5   again?

6   The DMF is critical to

7   genealogists who do forensic and other time

8   sensitive work because it is the only national

9   index of individuals. By having access to the

10   name, date, and place of death, and state

11   where the social security number was issued

12   can narrow search so death certificate and

13   obituary can be located. Clear? Other

14   questions from the floor? I mean, other

15   comments from the floor?

16   MS. MEYER: Sorry, switching

17   topics from genealogy to credit again. Fair

18   credit reporting agencies gather information

19   about a person's credit file. And they need

20   this information so that they can prevent

21   fraud. When someone is making a credit

22   application the credit granter will often seek

1   information about their credit file, and they

2   would have a legitimate purpose under the Fair

3   Credit Reporting Act, and under the, and to

4   prevent identity theft.

5   However, if they're limited in who

6   they can give that information to, that might

7   be issue for the gentleman from the Department

8   of Commerce, for example, because individual

9   creditors might not be able to go to the Death

10   Master File, but may be dependent on getting

11   credit reporting information from credit

12   reporting agencies. If they cannot report the

13   death information, along with the other

14   information about the credit history of a

15   particular individual, they would not be

16   giving accurate credit information and that

17   would be a huge problem.

18   And the only people who can get

19   credit reports are people who have permissible

20   purposes for getting the credit report under

21   the Fair Credit Reporting Act, and those are

22   limited by the Fair Credit Reporting Act.

1   MR. HAGEN: I have a comment from

2   Chris

3   Scaramastra. Upon the completion of the

4   certification process, we would ask that the

5   SSA DMF go back to a pre-November 2011 status.

6   We would ask for a full DMF.

7   MALE PARTICIPANT: Amen. Bravo.

8   MR. HAGEN: I think I would prefer

9   someone from the audience explain why we just

10   said amen, maybe why that's important.

11   MS. MEYER: This is Robbie Meyer

12   with the ACLI. And our members have been,

13   throughout this process, very, very concerned

14   about the fact that there is so much less

15   information in the DMF, or the public DMF than

16   there is in the full file that's available to

17   government agencies.

18   Less, of course, less information

19   that's in the file, you know, the less robust

20   the analysis of the information would be. And

21   there is also a concern, as time goes on there

22   will be a greater and greater difference

1   between the amount of information in the file

2   that's public and the other file. So, very,

3   very significant concern of ACLI member

4   companies.

5   MR. HAGEN: Somewhat out of the

6   scope of our certification process, but still

7   critical to the process of the content of the

8   file. Thank you. I have a question

9   concerning something that's been mentioned a

10   few times in this meeting, and that is about

11   third party distribution, third party access.

12   Can someone comment on the certification form

13   that you've seen as a notational form, and

14   tell me how third party organizations would

15   work with such a form? Can anybody speak to

16   that?

17   MR. FEDEROWICZ: I'll try.

18   MR. HAGEN: Try. Give it a shot.

19   MR. FEDEROWICZ: We're like a

20   third party administrator. We work for big

21   insurance companies, work for banks, we work

22   for pension funds. We work for a lot of

1   organizations who look for the services that

2   we do. We had a similar question to the

3   government as the other gentlemen, you know,

4   do we think we should we be certified and then

5   have our customers certified?

6   And right now the way we work for

7   - we also do, we also access files that have

8   to do with address information through

9   companies like LexisNexis and Accurum. And so

10   we have to not only be certified that we can

11   keep this stuff safe, we also have to certify

12   that our customers have a permissible purpose

13   to use this data, okay? So we actually go

14   through a double certification process, and so

15   I can see where we would require our customers

16   to certify with us that they have a

17   permissible purpose, that they're using the

18   data for the appropriate reasons, following

19   all the information you've had in your

20   notational thing.

21   So we do that right now. It's

22   just a part of our normal course of doing

1 business. I don't think it's onerous. I

2 think what would be onerous is that if you

3 said, well, listen, you know, we're going to

4 come audit you, but we want you to go audit,

5 you know, your customers. I mean that's a

6 big, big deal. We're not an audit company,

7 you know, so I think that's something you'd

8 have to really, really think about, you know,

9 how deep you go with your auditing. And so

10 that's the way it works right now for us.

11   MR. WIXON: Yes, this is Henry

12 Wixon. Thank you very much, Mr. Federowicz

13 for that because that's exactly the kind of

14 information we need. If you look at the

15 notional certification form, you'll notice

16 that in certain places rather than reference

17 a certified person it references the criteria.

18   And so that's not an accident, but

19 we know that, I mean we need to understand

20 how, if you were in a position where you had

21 to establish somehow that the third party, to

22 whom you gave this information, although not

1   certified, satisfied all those criteria, how

2   would you do that? How would you demonstrate

3   to NTIS under such a certification and program

4   that you had taken care of business in that

5   respect? Would it be hard? Would it be easy?

6   Are there things in place? And we need that

7   from, you know, we'd like to understand that

8   from everybody out there as we think about how

9   to put a program together.

10   MR. FEDEROWICZ: Well, part of

11   what we do, since we're doing business with,

12   primarily, with insurance companies and

13   pension plans, we're not doing business with

14   anything outside of that kind of framework.

15   We know these organizations have that

16   permissible use. We don't do business with

17   individuals. And individual cannot call us

18   up, or say I would like you to determine

19   whether this person is dead. We just don't do

20   that type of thing because it's outside of

21   that framework and outside that scope. So the

22   scope of our business dictates that we only do

1   business with businesses that have the same

2   interest in permissible purposes and use.

3   So if I, you know, signing up a

4   new insurance company customer, I mean, I know

5   that they have their regulatory interests.

6   You know, they have their fiduciary interests.

7   They want to stop annuity payments from being,

8   going out the back door, that type of stuff.

9   So I'm pretty confident when they sign that

10 form, we have them sign a form, when they sign

11 that form, that they're legit. I'm not really

12 worried about it. So, but we do have that

13 double step process.

14   MR. WIXON: And we appreciate that

15 from our, you know, our perspective is, you

16 know, we're several steps away from you. So

17 the question is, you know, how do we get the

18 reassurance that, or NTIS get the reassurance

19 that it will need on their certification

20 program to understand that you've done your

21 diligence? You -- and that's what we're

22 looking for from you and other members of the

1   public is to help us understand that. How it

2   would work, how it does work.

3   MR. HAGEN: One of the approaches

4   that could be taken on this is also about the,

5   Henry's point about the certified user.

6   There's two parts to that. There's the actual

7   document itself, and then there's a registry,

8   of sorts. Registry has to be who's been

9   approved on that list, and whether that's a

10   subscriber list or some list that's captured

11   internally within an organization, it's still

12   a registry. And where does that registry

13   reside?

14   In third party situation, does it

15   reside in the third party, or does it reside

16   as a central source? There's problems there

17   in that business information, we don't want to

18   hold your business information where your

19   subscribers are. But the thing is, we need to

20   have clear understanding that you have

21   certified users. That's a problem.

22   MR. FEDEROWICZ: And, you know,

1   with our relationship with -

2   MR. HAGEN: You have to be at the

3   mic, I'm sorry.

4   MR. FEDEROWICZ: You know, in our

5   relationship with our, like LexisNexis, okay?

6   We maintain a file of all of our certified

7   individuals, corporations I should say. You

8   know, we do not give that to them. They can

9   come in and audit us. They can come and look

10   through what we're doing, but it's, we

11   maintain that registry, if that's the kind of

12   -

13   MR. HAGEN: Yes, that's exactly.

14   Thank you.

15   MS. YOHE: Another scheme to look

16   at is under HIPAA, healthcare providers are

17   required to keep health information private.

18   And when they contract with somebody and they

19   give that information to that third party,

20   they have to have a business associate

21   agreement for that third party. And that

22   requires the third party to maintain certain

1   practices, and security requirements, and

2   comply with the HIPAA privacy and security

3   requirements.

4   And it also requires the business

5   associate to track any disclosures that they

6   made of the information so that if the

7   Secretary of Health and Human Services ever

8   came to audit they could go down the series

9   and audit where that information was

10   disclosed.

11   MR. HAGEN: Thank you.

12   MALE PARTICIPANT: Just to add

13   what Felix was talking about related to how

14   would you be able to obtain certification

15   information for, as Matt spoke about, one of

16   our client customers that we ran their policy

17   book of business versus the DMF.

18   In our contracts, contractually,

19   although we have a list of the insurers that

20   we do the matches for utilizing the DMF, in

21   the contracts that we have with our clients it

22   specifically states the regulation or

1 statutory requirement that our search or match

2 that's being performed meets for that client

3 company, the third party. Our, you know, our

4 client.

5   So, in that context, a little bit

6 deeper, yes, we have a list of who we do the

7 matches for, but we also have the reason.

8 We're contractually bound to meet the New York

9 Reg 308 for example, to do the matches based

10 on New York's regulatory requirement, or the

11 Kentucky statutory requirement in their law

12 that states what it has to be used to meet

13 that requirement. So we would have that level

14 of detail from our client insurers that, why

15 they're having to perform the matches, in the

16 way that we're performing them for them. So,

17 that helps.

18   MR. HAGEN: I have two comments

19 from WebEx. Robert Perholtz, as pioneer of

20 the FOIA law that made DMF available in 1979,

21 it's very unfortunate that the release of the

22 DMF has not been scrutinized over the years.

1   The ethical, controlled use of an untainted

2   DMF is paramount.

3   Second comment from Emily

4   Holubowich, sorry. State laws prohibit the

5   release of the state reported data in the DMF.

6   SSA recognized they released state data in

7   violation of state law and states' contracts

8   with SSA. They have no authority to release

9   the data, and it should have never been made

10   public. And parens, for NAPHSIS representing

11   state vital records registrars, close parens.

12   Any further comments? I have one question

13   more.

14   FEMALE PARTICIPANT: Can you

15   repeat that?

16   MR. HAGEN: Which one? The last

17   one? The whole thing? I'll try. For you, I

18   will do this. I'm sorry. State laws prohibit

19   the release of state reported data in the DMF.

20   SSA recognized they released state data in

21   violation of the state law and states'

22   contracts with SSA. They have no authority to

1   release the data, and it should have never

2   been made public, parens for NAPHSIS

3   representing state vital records registrars.

4   I think this is the comment coming from Emily,

5   and my apologies for not identifying her

6   further. I think she is from NAPHSIS, but I

7   am not certain. She is, yes? Thank you.

8   One last thing. And I mention

9   this as the, and this gets from the

10   certification issue, but it gets more over the

11   definition of process going forward with the

12   product, and the product terms and conditions.

13   I'd mentioned early in the meeting that we are

14   kind of, we are moving away, we are focusing

15   on subscriber access only. Is that a problem?

16   MR. MOSS: Yes.

17   MR. HAGEN: Can you elaborate?

18   MR. MOSS: Let me make sure that I

19   understood what you just said correctly. The

20   way the genealogical industry operates, for

21   the most part, is we have providers who are

22   normally, the way it has operated

1 historically, is we have a number of

2 enterprises, both for profit and non-profit,

3 who have historically paid the fees and

4 purchased the Death Master File. And

5 regularly update it, they are ongoing

6 subscribers. They have historically, they

7 have displayed items that are sensitive to

8 privacy concerns.

9   And since 2011 they have, for

10 example, all of the reputable genealogical

11 sites that I am familiar with have masked the

12 Social Security Number on all person, on

13 recently deceased people, for a minimum for

14 three years. Some have done it for longer,

15 and made that available to, in the case of the

16 for profit companies, they have their own

17 subscriber list. Some lists may be a million,

18 plus subscribers, members of the general

19 public. The other, even the non-profit folks

20 would make it available either to members in

21 a particular display, or to the general public

22 with no affiliation with their organization.

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 1   They would be displaying this information made

 2   broadly available to  -

 3               MR. HAGEN:  Mr. Moss are you

 4   referring, basically, to the new file that's

 5   less than three year old, or more than three

 6   year old file?

 7               MR. MOSS:  Both.

 8               MR. HAGEN:  Okay.  I just want to

 9   be sure I'm  -

10               MR. MOSS:  The new file would,

11   what they would do and what they had to do in

12   December of 2011 when, in response to

13   Congressional expression of intent to pass a

14   draconian piece of legislation basically

15   abolishing the Death Master File.  They

16   responded to the legitimate concerns.  We're,

17   no one who draws breath can fail to be

18   outraged by the conduct of identity thieves

19   that would subject the grieving parents of

20   children to this kind of, they lose their

21   child all over again.

22               And anyone who, everyone
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1 understands that. Our problem is we've got to

2 determine where the problem is, and Jan Alpert

3 and her comments clearly identified where the

4 problem was. Unaccustomed as I am to praising

5 the IRS, let me say that 2011, in 2011 they

6 weren't using any useful filters to identify

7 potentially fraudulent tax returns. Starting

8 in December of 2011 they did start using

9 filters. I don't expect them to report how

10 they were structured, but I have to surmise

11 they included in the development of their

12 filters the Death Master File that would flag

13 these, that particular kind of case. I expect

14 that 2 percent number that I highlighted on

15 the chart to be lower in 2012.

16   It is the only category on that

17 chart that I expect to be lower, and if the

18 early indications give us any indication of

19 what to expect, we could expect living socials

20 to be abused at twice the rate they were being

21 abused in 2011. And nothing in this law does

22 anything to interdict the abuse of living

1   Social Security Numbers.

2   MR. HAGEN: Thank you, sir.

3   MR. MOSS: Right. Forgive my

4   passion. This has been a two year project,

5   and for this 74 year old blogger. So -

6   MR. HAGEN: I'm interested in the,

7   there's a lot of people very passionate about

8   the Death Master File. Believe it or not,

9   there's a lot of interest in it. I'm

10   expecting to hear Don Imus speak up on it

11   this morning -

12   MR. MOSS: Yes, I'd be surprised.

13   Everyone who has used it appreciates its

14   value. And it is the people who haven't used

15   it who haven't really realized, there's an

16   unstated assumption that hiding things makes

17   it better. Obscurity is not security.

18   MR. HAGEN: Thank you, sir. I

19   have one last comment from Jan Meisels Allen

20   from the International Association of Jewish

21   Genealogical Associations. It is critical for

22   the information to be available as soon as

1 possible, not waiting to three years for

2 tracing medically inherited diseases, and

3 going back on the family tree to see if these

4 diseases, such as breast cancer, BRACA I and

5 II genes.

6   I'm not sure exactly sure what

7 that is, or prostate cancer is a familial

8 issue, to help the living and future

9 generations take necessary preventative

10 measures to save lives. Okay, I think without

11 any other questions from either the -- or

12 comments from the floor or the front, are we

13 complete? Everybody saying yes?

14   MR. MOSS: With our thanks for

15 providing the forum.

16   MR. HAGEN: Well you're welcome,

17 well thank you before I pass it on to Mr.

18 Borzino. We have one more comment it looks

19 like. Go ahead.

20   MS. MEYER: Just a quick question.

21 Do you all have any flavor yet as to your

22 timing with respect to your notional form?

1   MR. HAGEN: I leave that one to

2   Mr. Wixon.

3   MR. WIXON: So we are in concerted

4   discussions with sister agencies right now in

5   order to advance towards an interim solution,

6   and that's all I can share with you at this

7   point.

8   MS. MEYER: Perfect, thank you.

9   MR. HAGEN: Sir?

10   MALE PARTICIPANT: I was hoping to

11   pick up on the conversation that Henry and I

12   had. A legitimate purpose -- isn't the fact

13   that somebody is getting a grant from the

14   National Science Foundation, the National

15   Institutes of Health, do you really need to

16   see the charter of NSF and NIH to make grants?

17   What are you looking for there?

18   MR. WIXON: So, we were discussing

19   during the break the question of what, you

20   know, in our definition that we have with

21   respect to a legitimate business, purpose

22   subject to, you know, law regulation. What

1 laws and regulations, et cetera, would satisfy

2 that requirement?

3 And so we want to hear from you

4 about what you think the laws and regulations,

5 government regulations, et cetera, are that

6 should satisfy that requirement.

7 We have no preconceived notions

8 about it, and we're asking you to help us as

9 we think about, you know, the full notes and

10 comment rule making process to a final rule

11 where we might actually address that, or

12 whether we should address it, those kinds of

13 things. So whatever you can share with us,

14 you the public, all of you out there, during

15 our comment period with respect to that kind

16 of question will be valuable.

17 MALE PARTICIPANT: Our position

18 would be that existing law that authorizes a

19 grant through the National Science Foundation,

20 or the National Institutes of Health, a

21 federal contractor, even a government

22 employee, are clearly legitimate purpose.

1   They're clearly legal.

2   MR. WIXON: Thank you.

3   MALE PARTICIPANT: Okay.

4   MR. WIXON: That's the kind of

5   thing we need to hear.

6   MR. HAGEN: Well thank you.

7   Before we adjourn I want to say thank you to

8   all the participants and all the many

9   participants on the web. And I'll pass this

10   over to Bruce, to see if there's any, Mr.

11   Borzino, I am sorry, to see if he has any

12   further comments.

13   MR. BORZINO: I would just like to

14   ask you to send us your comments as complete

15   as you want to make them. I think we would

16   appreciate them sooner than the 18 March

17   deadline. I anticipate that some of you have

18   already started writing those. Certainly,

19   given our short suspense, trying to, well, the

20   26th of March is coming fairly quickly. So

21   the sooner we can have your comments in, and

22   the sooner we can make them available to our

1   sister agencies and others who might be

2   interested in them, that would certainly help

3   our cause.

4   MR. WIXON: But we want to

5   emphasize that comments received all the way

6   to the end of the comment period will be

7   considered by NTIS going forward.

8   MR. HAGEN: Thank you.

9   (Whereupon, the meeting in the

10   above-entitled matter was concluded.)

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